

# State of South Dakota

## SEVENTY-NINTH SESSION LEGISLATIVE ASSEMBLY, 2004

686J0557

### HOUSE BILL NO. 1133

Introduced by: Representatives Murschel, Buckingham, Christensen, Cutler, Dykstra, Hennies, Kraus, LaRue, Olson (Mel), and Teupel and Senators Olson (Ed), Albers, Dempster, Duniphan, Koetzle, and Schoenbeck

1 FOR AN ACT ENTITLED, An Act to allow special education students to open enroll without  
2 a placement meeting in most instances.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 13-28-42.1 be amended to read as follows:

5 13-28-42.1. Notwithstanding the provisions of §§ 13-28-44 and 13-37-8.4, a request to  
6 transfer a student in need of special education or special education and related services may be  
7 granted if the nonresident school district determines that:

8 (1) The student's current individual education plan is appropriate;

9 (2) The parent or guardian of the student approve of the current individual education  
10 plan; and

11 (3) The current individual education plan can be implemented by the nonresident district  
12 as written.

13 A request to transfer a student in need of special education or special education and related  
14 services may be denied only pursuant to § 13-28-44 or if an individualized education program  
15 team consisting of representatives from the resident and nonresident districts determines that



1 the nonresident district ~~can~~ cannot provide an appropriate instructional program and facilities,  
2 including transportation, to meet the student's needs. ~~If~~ Notwithstanding the provisions of § 13-  
3 37-8.4, if the request to transfer is granted, the nonresident district is responsible for the  
4 provision of a free appropriate public education for the student in need of special education or  
5 special education and related services. Notwithstanding the provisions of § 13-28-45, the  
6 ~~individualized education program team~~ nonresident district shall also determine whether the  
7 student in need of special education requires transportation as a related service. If so, the  
8 nonresident district shall provide or ensure the provision of transportation within the boundaries  
9 of the attendance center to which the student is assigned.

10 If a parent or guardian of a student in need of special education or special education and  
11 related services requests to transfer the student back to the resident district, the ~~individualized~~  
12 ~~education program team shall consider the request~~ request may be denied only pursuant to § 13-  
13 28-44 or if an individualized education program team consisting of representatives from the  
14 resident and nonresident districts determines that the resident district cannot provide an  
15 appropriate instructional program and facilities, including transportation, to meet the student's  
16 needs.

17 Section 2. That § 13-28-44 be amended to read as follows:

18 13-28-44. Each school district by November 1, 1997, shall by resolution adopt relevant  
19 standards for the acceptance and rejection of an application to enroll in the district under the  
20 provisions of §§ 13-28-40 to 13-28-47, inclusive. The board shall adopt standards through  
21 official board action, set them forth in writing, and make them available to any individual upon  
22 receiving an oral or written request. Standards shall be limited to the capacity of a program,  
23 class, grade level, and school building operated by the board and the pupil/teacher ratio.  
24 Discrimination based on race, gender, religious affiliation, or disability is prohibited. If two or

1 more children from a family residing in the same household must enroll in different school  
2 districts as the result of a board's denial of an application to transfer from a resident district or  
3 to enroll in a nonresident district under the provisions of §§ 13-28-40 to 13-28-47, inclusive,  
4 neither the resident board nor the nonresident board may deny the application except at the  
5 recommendation of an individualized education program team consisting of representatives  
6 from the resident and nonresident districts under the provisions of § 13-28-42.1. The decision  
7 of a local school board regarding a student's application for open enrollment or a request to  
8 return to the resident district under the provisions of §§ 13-28-40 to 13-28-47, inclusive, is  
9 subject to de novo appeal under the provisions of chapter 13-46. The Department of Education  
10 may promulgate rules pursuant to chapter 1-26 specifying procedural and administrative  
11 requirements for the implementation of the open enrollment program and related transfers and  
12 enrollments under the provisions of §§ 13-28-40 to 13-28-47, inclusive.